

SECOND DIVISION

[G.R. No. 120881, May 19, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ELPIDIO GERMINA Y MALDO, ACCUSED-APPELLANT.**

D E C I S I O N

MARTINEZ, J.:

Charged with, tried for and thereafter convicted of murder under an information reading:

"That on or about the 9th day of November, 1994 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, with treachery, evident premeditation and with deliberate intent to kill, did then and there willfully, unlawfully and feloniously attack and shot (sic) with a handgun one RAYMUNDO ANGELES Y VILLAMOR hitting him on the back of his body thereby inflicting upon said victim serious physical injuries which directly caused his death.

Contrary to law."^[1]

herein accused-appellant Elpidio Germina y Maldo was sentenced by the Regional Trial Court, Branch 171, of Valenzuela, Metro Manila to suffer the penalty of *Reclusion Perpetua* and to pay the victim's heirs P50,000.00 as indemnity, funeral expenses amounting to P51,700.00 and costs.^[2]

The prosecution, based on eyewitness accounts of Marcelino Almazan,^[3] Gaudencio Angeles^[4] and Ramil Regencia^[5] (victim's brother-in-law, father and neighbor, respectively), detailed a treacherous killing of Reymundo Angeles (hereafter, Raymund.). Culled from their individual testimonies, it appears that at around 7:30 o'clock in the evening of November 9, 1994, appellant, armed with a revolver, arrived at the Angeles residence at Engracia Street, Bahay Pare, Marulas, Valenzuela looking for Raymund who was not there at that time. A heated conversation took place between Raymund's relatives (parents, brothers and sisters) and appellant concerning a quarrel that transpired earlier between appellant's brother and Raymund. Moments later, Raymund arrived. Appellant, upon spotting him, drew his gun which prompted Raymund and his relatives to scamper for safety. Hardly had Raymund gained momentum in his retreat when he stumbled on a street hump and fell on the ground face down. Appellant easily caught up with and then fired at his defenselessly positioned prey - the single bullet finding its mark on the back of Raymund's neck. Raymund was rushed to the Santisimo Rosario General Hospital for medical treatment as soon as appellant darted away from the crime scene, but to no avail.

The autopsy report^[6] and testimony^[7] of prosecution witness Dr. Valentin Bernales of the NBI revealed that Raymund succumbed to a gunshot wound found at the back right side of his buttock measuring 0.8 x 0.7 cms., without any exit wound. Dr. Bernales clarified that as the death bullet has a downward trajectory, the victim must have been in a lying, face-down position when fired upon by the assailant.

Raymund's mother, Nenita Angeles, testified that the family spent P 51,700.00 for her son's funeral.^[8]

Appellant, for his part, did not deny having shot Raymund, but his story,^[9] corroborated by his wife Nida Germina,^[10] painted a picture of self-defense. Appellant's story is that he sought Raymund on the night of November 9, 1994 to verify news that the latter mauled and stabbed his mentally retarded brother, Rafael. At the Angeles residence, appellant, together with his wife Nida and Rafael, talked to Raymund's relatives about the mauling/stabbing incident. Shortly thereafter, Raymund appeared, joined the group and with a double-bladed weapon in his right hand, cursed appellant: "*Putang ina mo, papatayin ko kayo!*" (You son of a bitch, I will kill you all!) The relatives of Raymund tried to hold him at bay but to no avail. Appellant then attempted to run away but as he found himself cornered against a wall and when Raymund was about to strike him with the bladed weapon, he fired at Raymund. Appellant left the place immediately thereafter and voluntarily gave himself up to SPO2 Henry Marteja.

The trial court was of the impression that the prosecution's story and witnesses were more credible than those of the defense. It struck down appellant's tale of self-defense - particularly of a frontal encounter with Raymund - in the face of the fact, as duly established by testimonial evidence and the autopsy report, that Raymund was shot at the back while lying face down on the ground. Treachery qualified Raymund's killing to murder for it is apparent, said the court, that appellant took advantage of the helpless condition of Raymund to insure its execution without risk to himself. *Reclusion Perpetua*, and not death,^[11] was the penalty meted appellant due to the mitigating circumstances of voluntary surrender and passion which the trial court appreciated in this wise:

" The accused voluntarily giving up himself to the police authorities immediately after the commission of the offense to which the prosecution did not refute, shows act of repentance, respect for the law and his willingness to suffer and pay for the consequences of his criminal acts and a clear indication of his moral disposition favorable to his reform. The lack of proof of previous conviction or having (sic) charged of similar or of any felony, lead to the conclusion that the accused is not beyond correction or reformation. Not to mention the fact that he committed the serious crime due to the maltreatment/physical injuries inflicted by the victim on his mentally retarded brother, that triggered his anger which diminish (sic)/weaken (sic) the exercise of his will power, persuaded the Court to believe that the imposition of the penalty next lower to death is reasonable and justified."^[12]

Appellant comes to us praying, not for his acquittal, but that he be convicted of homicide only and thus be made to suffer a reduced penalty corresponding thereto. He claims that there is no treachery even if it be conceded that he gunned down Raymund from behind.